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THE ANDHRA PRADESH GAZETTE

PART-II EXTRAORDINARY
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HYDERABAD, MONDAY, DECEMBER 22, 2008.

NOTIFICATIONS BY GOVERNMENT

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LEGISLATURE SECRETARIAT

(Legn.)

THE HON'BLE SPEAKER, ANDHRA PRADESH LEGISLATIVE ASSEMBLY,
HYDERABAD

Monday, the 22nd December, 2008

Petition No 1 of 2007

Between:

Sri G. Vijaya Rama Rao

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Petitioner

AND

1. Sri Geetla Mukunda Reddy
2. Sri Narayan Rao
3. Sri Mandadi Satyanarayana Reddy
4. Sri Dugyala Srinivasa Rao
5. Sri Kasipeta Lingaiah
6. Sri Soyam Bapu Rao
7. Smt. Bandari Shara Rani
8. Sri Shanigaram Santosh Reddy
9. Sri Turupu Jayaprakash Reddy

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Respondents

Petition No.2 of 2007

Between:

Smt. Padmadevender Reddy

...

Petitioner

AND

1. Sri Geetla Mukunda Reddy
2. Sri Narayan Rao
3. Sri Mandadi Satyanarayana Reddy
4. Sri Dugyala Srinivasa Rao
5. Sri Kasipeta Lingaiah
6. Sri Soyam Bapu Rao
7. Smt. Bandari Shara Rani
8. Sri Shanigaram Santosh Reddy
9. Sri Turupu Jayaprakash Reddy

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Respondents

These Petitions having come up for hearing before me and after hearing the arguments of the Petitioners and the Respondents and their Advocates Sri J. Ramachander Rao through their Senior Counsel Sri K. Ramakrishna Reddy for the Petitioners and Sri P. Kesava Rao through their Senior Counsel Sri Movva Chandra Sekhar Rao for the Respondents, I pronounce the following Order:

ORDER

The Petitionion No.1 filed by Sri G. Vijayarama Rao under Paragraph 2(1)(a) of the Tenth Schedule r/w Rule 6 of the Members of A.P. Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 against the nine Respondents.

The Petitioner in his petition submitted that the Respondents are elected to the Andhra Pradesh Legislative Assembly in 2004 having been set up by the TRS political party. In the elections to the Andhra Pradesh Legislative Council held in March, 2007, the TRS has decided to set up two candidates, viz., Sri H.A. Rahman and Sri M. Sudarshan Rao and contrary to the decision of the Party the Respondents had proposed the name of Sri Kasani Gnaneshwar, who was instrumental in forming Mahajan Party, which was registered with the Election Commission of India. In support of his contention, the Petitioner had submitted the certified copy of Form-III B notice issued by the Returning Officer and prayed that the Respondents be disqualified from continuing as Members of the Andhra Pradesh Legislative Assembly as their action and conduct amounts to voluntarily giving up the Membership within the meaning of Paragraph 2(1)(a) of the Tenth Schedule.

All the Respondents filed a common counter denying the allegations made in the petition. They averred in the petition that they were elected as independent candidates as they were proposed by ten voters and as the TRS was not a recognized party by the date of the elections. They were not being invited either to the party meetings or for the legislature party meetings since a long time prior to the date of election and as such they were not aware of the decision of the party to set up Sri H.A. Rahman and Sri M. Sudarshan Rao. Moreover, they did not receive any communication also to that effect from the party. They proposed Sri Kasani Gnaneshwar, who is an independent candidate and who is striving for the cause of Telangana. They alleged that since they were opposing the dictatorial tendencies of the Party President Sri K. Chandrasekhar Rao, which was detrimental to the interests of the party, the disqualification petition was filed with false and baseless allegations and they prayed that the petition be dismissed.

Disqualification Petition No.2 was filed by Smt. Padma Devender Reddy seeking disqualification of the Respondents under X Schedule r/w Art. 191(2) of the Constitution of India.

The petitioner had stated in her petition that TRS is a registered and recognized political party. In the general elections to the Andhra Pradesh Legislative Assembly held in April, 2004, altogether 26 candidates, including the Petitioner and the Respondents, were elected. The respondents are indulging in anti-party activities. As a part of it, they had proposed the name of Sri Kasani Gnaneshwar, President of Mahajan Party in the election to the Andhra Pradesh Legislative Council contrary to the decision of the party taken at its meeting held on 5.3.2007 to set up Sri H.A. Rahman and Sri M. Sudarshan Rao, which was communicated to all the Party Members including the Respondents. With the sole support of the Respondents, Sri Kasani Gnaneshwar was elected and the official TRS candidate Sri Sudarshan Rao was defeated. The Respondents had made celebrations at the time of filing of nomination of Sri Kasani Gnaneshwar and at the time of his victory. In support of her contention, she had filed newspaper reports and recorded version of the interview to the electronic media. The conduct and activities of the Respondents amounts to voluntarily giving up membership of the TRS party and disobedience of the directions issued by the TRS party and prayed that they may be disqualified on the ground of defection within the meaning of Paragraph 2(1)(a) and 2(1)(b) of the X schedule read with Art. 191(2) of the Constitution of India.

Denying the averments in the Petition, the Respondents submitted a counter stating that the TRS is not a recognized political party and Paragraph 2 (1)(a) of the Tenth Schedule has no application to them as they were elected in 2004 as independent candidates. Even assuming for the purpose of argument that they belong to a political party, they did not deviate from the ideals of the Party. They were only opposing the dictatorial tendencies of the Party President and every innocuous act does not amount to voluntarily giving up the membership. They had proposed the candidature of Sri Kasani Gnaneshwar, who has decided to contest the elections to the Legislative Council in 2007 as an independent candidate, as they did not receive the alleged communication regarding the decision of the Party to set up Sri H.A. Rahman and Sri M. Sudarshan Rao. Copy of Resolution dated 5.3.2007 was alleged to have been dispatched on 19.3.2007 while the last date for filing the nomination for elections to the Legislative Council was 7.3.2007. They had no knowledge that Sri Kasani Gnaneshwar belongs to Mahajan Party. They contended that proposing the name of any other political party member does not amount to voluntarily giving up membership. In fact, the Members of Congress and TDP also proposed the candidates of other parties and a BJP member also proposed the name of Sri Kasani Gnaneshwar. He secured the required votes for his election from different sources and there is no truth in the allegation that they had proposed his name with the *mala fide* intention of defeating the TRS party candidate. The Respondents also denied the allegation that they had celebrated jubilantly the victory of Sri Kasani Gnaneshwar and the alleged reports of print and electronic media are baseless and inadmissible in evidence. The allegations are false and frivolous and prayed that the petition may be dismissed with costs.

The Petitioner had also filed reply affidavits to the counter stating that the Respondents had not denied the contents of Form-B furnished by the Secretary to Legislature and Returning Officer. Further, the Respondents had also produced Form B issued by the TRS Party at the time of filing their nomination in the general elections in 2004, they were allotted common symbol "car" and the election certificates issued to them by the Returning Officers show that they were sponsored by the TRS. The TRS was recognized as a political party by the Election Commission on 21.5.2004 and for the purpose of X schedule a registered political party is sufficient. Therefore, the action and conduct of the Respondents clearly attract Schedule X of the Constitution and they are liable for disqualification.

Based on the pleadings in the petition and the counter, the following points were arrived at for consideration:

1. Whether proposing a nomination and supporting a person who belongs to any other political party other than the original political party for the election of Legislative Council of the State by a legislator of original political party would amount to incurring any disqualification under para 2(1)(a) of the X schedule of the Constitution of India?
2. Whether TRS is a political party as contemplated under X schedule?
3. Whether TRS is a recognized political party as on the date of general elections, i.e., April, 2004?
4. Whether elections to the Legislative Council of the State were held on party basis?
5. Whether TRS can issue a whip to Respondents 1 to 9 to propose, support and vote for its two candidates viz., Sri H.A. Rehman, Sri Sudershan Rao for the Legislative Council election? And if so, whether such whip issued by TRS dt. 5.3.2007 was served on the respondents on or before 7.3.2007 or not?
6. Whether Kasani Gnaneswar contested as an independent candidate or on the party ticket of Mahajan Political Party?
7. Whether the action of Respondents 1 to 9 attracts the disqualification as contemplated under Para 2(1)(b) of X Schedule of the Constitution of India.

During the course of trial, the Counsel for Petitioners submitted that the Petitioner in D.P.No.2 is not pressing her case and prayed that the Hon'ble Speaker may be pleased to decide D.P.No.1.

In support of his case, the Petitioner examined himself as P.W.1. P.W.1, Sri G. Vijayarama Rao has deposed that TRS is a registered political party and subsequently it was recognized by the Election Commission also. All the Respondents had filed their nominations in the election to the Legislative Assembly in 2004 on behalf of the TRS party with the B-Forms issued by the Party President Sri K. Chandrasekhar Rao and got elected. The Returning Officers also issued Election Certificates to the effect that they were elected as TRS candidates. For the reasons best known to them, the Respondents started alienating from the Party and in the elections held to the Andhra Pradesh Legislative Council from the Assembly constituency, the Party had decided to set up Sri H.A.Rahman and Sri M. Sudershan Rao and requested all the MLAs to propose and support them. Contrary to the said decision, the Respondents had proposed Sri Kasani Gnaneshwar, President of Mahajan Political Party. In addition to proposing, the Respondents have also openly worked for the success of Sri Kasani Gnaneshwar. For this purpose, he has filed CD of the interview given by the Respondents to the electronic media and also the press clippings.

In all the Respondents examined four witnesses in support of their case. Sri Mandadi Satyanarayana Reddy, MLA was examined as RW 1. In his evidence, he has stated that the Respondents were elected as Independent candidates in 2004 elections and they were only sponsored by TRS party as they have been proposed by ten voters. The elections to the Council were not held on political party basis. They can propose and vote in favour of any candidate to whichever party he belongs as was done by some members of other parties. No party can issue a whip directing its members either to propose or vote for a particular candidate and even if it is issued, it is invalid in law. None of the Respondents received the resolution of the party dated 5.3.2007 and the last date for filing nominations was 7.3.2007 and they were under the bona fide impression that they can propose any or all the candidates.

Sri G. Mukunda Reddy, MLA was examined as RW 2. His evidence was by and large same as that of RW 1.

Sri C. Chandrasekhar Reddy, Revenue Divisional Officer and Returning Officer for Peddapalli Assembly Constituency for 2004 elections, was examined as RW3. In his evidence RW 3 has stated that ten voters proposed the name of Sri G. Mukunda Reddy . He also stated that according to Sec. 33 of the R.P. Act only one proposer is sufficient for a candidate set up by a recognized political party.

Sri K. Tuljanand Singh, Secretary, Andhra Pradesh Legislature was examined as RW 4. In his evidence, the Secretary has stated that he was the Returning Officer for the Council Elections and as such he cannot speak in respect of the general elections held to the Andhra Pradesh Legislative Assembly in 2004. He also stated that after the declaration of results in the general elections, the Election Commission will publish a gazette notification and a copy of it will be sent by the Commission to the Legislature Secretariat also. During the course of cross-examination by the Counsel for the Petitioner, the witness had stated that at the conclusion of every session, the Hon'ble Speaker will announce the Party Position before adjourning the House *sine die*. He agreed that the list of Members of TRS party maintained in the Legislature Secretariat, contains 26 names, which include the names of the Respondents also.

During the course of arguments, the Counsel for Petitioner contended that though they had filed different applications under 2(1)(a) and 2(1)(b) of the Tenth Schedule, the evidence was recorded in the First petition under 2 (1)(a) and they are confining their arguments to the first petition only. He stated that for the purpose of X schedule, there is no distinction as to whether it is a registered political party or a recognized political party. All the Respondents were set up by the TRS Political party and they were elected as candidates of TRS. The Notification issued by the Election Commission and the records maintained by the Legislature Secretariat bear testimony to that effect. Even in the counter filed in D.P.2 the Respondents had admitted that TRS is "our" party and, therefore, they are now estopped from claiming that they are independent candidates. Having been established that they are Members of the TRS, they cannot act contrary to the decision of the Party and propose the nomination of Sri Kasani Gnaneshwar, who belongs to Mahajan Party. Even though all the party Members were informed of the

decision to set up Sri H.A.Rahman and Sri M. Sudarshan Rao as candidates of TRS party in the election to the Legislative Council from Assembly constituency, the Respondents had abused the Party president, proposed and supported another Party candidate. This leads to the irresistible conclusion that they had voluntarily given up the Membership of the TRS party within the meaning of Paragraph 2(1)(a) of the Constitution of India.

Citing the case of *Ravi S. Naik v. Union of India* 1994 2 SCC 641 the Counsel for Petitioner contended that the words 'voluntarily giving up membership' are not synonymous with 'resignation' and have a wider connotation. An inference could be drawn from the conduct of a member that he has voluntarily given up his membership. He also referred to the decision of the Supreme Court in *Kihota Hollohan v Zachelly Another* 1992 2 SCC 651 and contended that provisions of Para 2(1)(a) proceeded on the premise that political propriety and morality demand that if such a person after the election changes his affiliation, he should give up his membership of the legislature and go back before the electorate. He also cited the decision of the Supreme Court in *Mahachandra Prasad v Chairman of Bihar Legislative Council* 2004 8 SCC 747 and argued that there is no *lis* between the person moving the petition and the Member of the House who is alleged to have become disqualified. It is not an adversarial kind of litigation. X schedule does not confer any discretion on the Presiding Officer of the House. His role is only to ascertain the relevant facts. Once the facts gathered show that the Member of the House has done any such act, which comes within the purview of Para 2(1)(a) of the Constitution of India, the disqualification will apply and the Presiding Officer will have to make a decision to that effect. He stated that copies of all the material papers submitted were furnished to the other side and the other side had also submitted certain material papers most of which were newspaper clippings and opportunity was always available to rebut the same. He also relied upon the order dated 27th January, 2008 of the Hon'ble Speaker, Lok Sabha in the matter of Sri Rajesh Verma v. Sri Mohammed Shahid Akhlaque and two other cases and the decision of the Hon'ble Chairman, Rajya Sabha on the petition of Shrimati Sushma Swaraj against Sri Jai Narain Prasad Nishad, wherein the press reports were relied upon heavily, and stated that in a democratic set up like ours, the newspaper reports, though not strictly proved as per the

law of evidence, can be taken as providing reliable circumstantial evidence unless proved otherwise. He prayed the Hon'ble Speaker to allow the Petition.

In his arguments, the senior Counsel for Respondents stated that all the Respondents contested elections as independent candidates. For this purpose he relied upon Sec. 33 of the Representation of People Act, 1951 and said that there are only two categories of candidates – one set up by recognized political party and the second independents. For a recognized political party candidate, one proposer is sufficient and for others, ten proposers are required. As all the Respondents were proposed by ten voters, they are independents. Inviting attention to Form 21-C, Election Certificate, he argued that because the respondents were elected as independents, it is mentioned therein as 'sponsored by TRS'. If a candidate is elected on behalf of a recognized political party, it would be 'set up' by political party. He further argued that in D.P.1, there is no allegation that the Respondents have supported Sri Kasani Gnaneshwar. The allegation is that they have only proposed the candidature of Kasani Gnaneshwar. Realising that D.P.1 is not maintainable, the Petitioner had come up with D.P.2. For the reasons best known to them, the Petitioner did not choose to prove the allegations in D.P.2. The learned Sr. Counsel argued that the allegation that the Respondents proposed the candidature of Kasani Gnaneshwar contrary to the directions of the party is not supported by facts and law. The Petitioner did not file any documents or prove in his evidence that the Respondents were invited for the party meeting where a decision was taken to support Sri H.A.Rahman and Sri M.Sudarshan Rao was taken. In fact, they were not being invited for any of the party meetings. Further, even according to the Petitioner, the decision of the party taken at its meeting on 5.3.2007 was communicated to the Respondents on 19.3.2007 whereas the last date for filing nominations was 7.3.2007. He also tried to draw an analogy between the procedure for issue of whip under the Schedule X and Section 153 of the Panchayat Raj Act by relying upon the judgment of the High Court reported in 2004 1 ALT 617 and argued that the whip should also contain the consequential action that would flow in case of its violation. As the same has not been followed, the whip is not valid

Even assuming that the Respondents are elected as TRS candidates, the Sr. Counsel argued that the Respondents do not incur disqualification by proposing the candidature of Sri Kasani Gnaneshwar. Legally, no resolution which is contrary to the Constitution or the law, is valid. A whip or direction can be issued in respect of the proceedings in the Assembly and if it is violated action can be initiated. In respect of the elections to the Legislative Council, no whip can be issued, he added. Relying upon Art. 171(4) of the Constitution of India and Rule 37-A of the Conduct of Election Rules, he contended that when the Constitution and the Election Rules provide for voting to as many candidates as are contesting, by drawing necessary inference, there is no bar to propose a candidate. He referred to Sri N. Kiran Kumar Reddy and Sri Mal Reddy Ranga Reddy proposing the candidate of other party and argued vehemently that a political party cannot issue a whip or direction contrary to the provisions of the Constitution and the law and even if it is issued, it is void. .

Further, the Sr. Counsel for the Respondents argued that the Hon'ble Speaker is the Tribunal under the X Schedule and while discharging his functions, the Hon'ble Speaker has to give a fair and reasonable opportunity to the other side. Relying upon the judgment of the Hon. Supreme Court in *Union of India v. TR Varma* AIR 1957 Supreme Court 882 he stated that the rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relied, the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined and that no materials should be relied on against him without being given an opportunity of explaining them. The petitioner had produced the CD and also the newspaper clippings and no one to prove the same was examined. He also relied upon the judgment of the Supreme Court in *N.D. Gupta v Birendra Kumar Jaiswal* and contended that marking of a document as exhibit by Court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence, i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue. He contended that neither Sri Kasani Gnaneshwar nor Sri S.Santosh Reddy or any other person who spoke to the press was examined to the veracity of the press clippings and as such they cannot be relied upon. For this purpose,

he cited the decision of the Supreme Court in *Laxmi Raj Shetty v State of T.N.* AIR 1988 SC 1274 wherein it was held that a statement of facts contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in the court. He also relied upon the judgment of the Supreme Court in *Samant N. Balakrishna v. George Fernandez* AIR 1969 SC 1201 and contended that a news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand secondary evidence. It is well known that reporters collect information and pass it on to the editor, who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news item cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. Even in the recent order dated 27th January, 2008 of the Hon'ble Speaker, Lok Sabha, in the matter of Sri Rajesh Verma v. Sri Mohammed Shahid Akhlaque, and two other cases the Respondents never disputed the version of the petitioners as was brought out in the newspaper clippings and CDS, and, therefore, the Hon'ble Speaker Lok Sabha relied upon the newspaper reports. Whereas in the present case, he argued that the Respondents have disputed the same and as such no reliance can be placed on the same. He contended that the Respondents never deviated from the aims and objects of TRS and it is only the President of the Party who has deviated bypassing various Committees within the Party. As a result of this undemocratic behaviour, many seniors alienated from the party and because the Respondents are opposing such dictatorial attitude of the President, the Petitioner had twisted the facts and law and filed this petition. This petition is not maintainable either on facts or in law and as such it is liable to be dismissed.

The petition under Paragraph 2(1)(a) of the X Schedule r/w Art.191 (2) of the Constitution of India and Rule 6 of the Member of Andhra Pradesh Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 was filed by Sri G. Vijayarama Rao on 19th March, 2007. Thereafter Smt. Padma Devender Reddy filed another petition under X Schedule on 7.4.2007. From the dates of filing of the petitions 22 sittings were held and the petitioners and respondents were given fairly reasonable opportunity to put forth their case.

The main contention of the Petitioners in both the petitions is that the Respondents 1 to 9 are Members of the Telangana Rashtra Samithi (TRS) Party and contrary to the decision taken by the Party on 5.3.2007, the Respondents 1 to 9 have proposed Sri Gyaneshwar, who contested as an independent candidate in the election to the Andhra Pradesh Legislative Council held in March, 2007 from the Assembly constituency, supported him and ultimately got him elected. These acts and conduct of the Respondents would clearly attract the provisions of Paragraph 2 (1) (a) and (b) of the X Schedule.

During the course of personal hearing, the Petitioner, though did not withdraw the 2nd petition, did not press the same and requested that a decision may be given on the 1st petition filed under Paragraph 2(1)(a) of the X Schedule.

In support of their claim that the Respondents 1 to 9 are Members of the TRS party, the Petitioner filed copies of the nomination papers filed by the Respondents in the general elections to the Andhra Pradesh Legislative Assembly held in 2004, the Gazette Notification dated 12.5.2004 issued by the Election Commission, copies of the party-wise list of Members of the Andhra Pradesh Legislative Assembly maintained by the Andhra Pradesh Legislature and also examined the Secretary, Andhra Pradesh Legislature. On the contrary, the contention of the Respondents is that they do not belong to the TRS party and they contested as independent candidates with a common symbol, got elected as Members of the Andhra Pradesh Legislative Assembly and continued to remain as such and only as an independent candidates, they have proposed Sri Kasani Gyaneshwar in the election to the Andhra Pradesh Legislative Council.

In accordance with the provisions of the Constitution and the Representation of People Act, 1951, it is the duty and responsibility of the Election Commission to conduct the elections. After the conduct of elections and issue of Notification, the House will come into existence. In the instant case, the Election Commission issued the Gazette Notification on 12.5.2004 constituting the 12th Andhra Pradesh Legislative Assembly.

The Notification clearly mentions that the Respondents belong to the TRS party. It is only based on the Notification issued by the Election Commission and the details of leadership of a legislature party furnished, the Legislature Secretariat will deal with the Members. The records of the Andhra Pradesh Legislature and the evidence of RW4 indicate that the strength of TRS Legislature party is 26 including that of the Respondents. Nothing has been brought on record that the Respondents disputed the same at any time after their election till the filing of the disqualification petition. The Respondents also referred in their counter to the TRS as "our" party. In view of this, I consider TRS is a political party and all the Respondents are its Members.

The Petitioner further stated that on 5.3.2007, the TRS party passed a resolution nominating Sri H.A Rahman and Sri M.Sudershan Rao as the party candidates for the election to the Andhra Pradesh Legislative Council from the Assembly constituency. This decision was also made public by the Party President through press statement. The Respondents contrary to the decision of the party proposed Sri Kasani Gyaneswar, an independent candidate, supported him and worked for his success. From this conduct of the Respondents 1 to 9 in defying the decision of the party, it could be inferred that they had voluntarily given up the membership of the TRS party within the meaning of paragraph 2(1)(a) of X Schedule incurring disqualification. The argument of the Respondents is that elections to the Legislative Council are held in accordance with Art.171(4) of the Constitution of India r/w Rule 37-A(2) of the conduct of Election Rules, 1961 on the basis of proportional representation by means of single transferable vote according to which every member is legally entitled to exercise his preferential franchise in respect of as many number of candidates as contesting. The right to vote includes the right to propose, which right was exercised not only by them, but also the Members of other political parties. Article 171(4) is an exception to Paragraph 2 of X Schedule and what is permissible under Art. 171(4) cannot be said to be impermissible under X Schedule. The contention of the Respondents is that they have exercised their legal and constitutional right and they did not incur any disqualification within the meaning of X Schedule.

From the arguments of both sides, it is not disputed that the Respondents had proposed the name of Sri Kasani Gyaneswar, an independent candidate, in the election to the Legislative Council. Form III B, Notice of Nomination issued by the Returning Officer and Secretry to the Legislature on 7th March, 2007 clinchingly establishes that the Respondents 1 to 9 had proposed the name of Sri Kasani Gyaneswar. The argument of the Respondents is that they are not a party to the decision of the TRS party taken on 5.3.2007 in selecting Sri H.A. Rahman and Sri M. Sudershan Rao and they had proposed the name of Sri Kasani Gyaneswar in exercise of their constitutional right to oppose the dictatorial attitude of the TRS Party President without deviating from the ideology of the TRS party as Sri Kasani Gyaneswar is also a supporter for the cause of separate Telangana. The basic objective of bringing forward the Constitution (52nd Amendment) Act incorporating the X schedule is to curb the evil of political defections, which endanger the very foundation of our democracy. As a remedy to this malady, the X Schedule proposed disqualification. Under Paragraph 2(1)(a) a Member would incur disqualification if he voluntarily gives up his Membership of such political party. Under 2(1)(b) he would incur disqualification if he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs. The Hon'ble Supreme Court in *Ravi S. Naik v. Union of India* AIR 1994 SC 1558 held that the expression "voluntarily given up his membership" is not synonymous with "resignation" and it has a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. In the absence of formal resignation, an inference can be drawn from the conduct of a Member that he has voluntarily given up his membership of the political party to which he belongs. In a subsequent case *G. Viswanath v. Speaker, Tamil Nadu Legislative Assembly* 1996 (2) SCC 353 also the Supreme Court reiterating its earlier stand observed that the fact of voluntarily giving up the membership of the political party may be either express or implied. The TRS Party has taken a decision on 5.3.2007 to propose and support the candidature of Sri H.A. Rahman and Sri M. Sudershan Rao. This decision was also widely reported in the media. The petitioner had filed newspaper clippings of Vaartha, a Telugu daily dated 7th March, 2007. The petitioner had also filed the CDs containing the video clippings. Even the newspaper clippings of The Hindu, the

Indian Express dt.8.3.2007 filed by the Petitioner along with the Petition are to the effect that at the time of filing nomination on 7th March, 2007 when the Respondents came face to face with the other Members of TRS party in the Legislative Assembly premises, they raised slogans against each other. There is also no reason why these newspapers will publish wrong photographs and reports. Further, there is no denial to those reports also from the Respondents. Subsequently also the Respondents 1 to 9 spoke and posed to the media along with Sri Kasani Gyaneswar. From this conduct of the Respondents, it could be inferred that they had proposed Sri Kasani Gyaneswar knowing full well the decision of the TRS party in selecting Sri H.A. Rahman and Sri M. Sudershan Rao. The Hon. Supreme Court in *Ravi S Naik v Union of India* upheld the order of the Speaker of Goa Legislative Assembly in disqualifying certain Members relying on the reports and photographs published in the newspapers. The Hon. Supreme Court in *Balakrishna v. George Fernandes* AIR 1969 SC 1201 held "like any other evidence, a news report does not prove itself and without such proof it only offers a secondary evidence and newspaper reports may be taken into account with other evidence". The Hon. Supreme Court also further observed "from circumstantial evidence an inference can be drawn about happening of such events and about the truth of the contents of newspaper reports. Of course, the circumstances must be such that will not admit of any other explanation". In the present case reading together the averments made by the Petitioner and the Respondents in the Petition and the counter, the Gazette Notification issued by the Election Commission, the evidence of witnesses and the Notice of Nomination in Form III B issued by the Returning Officer and the Secretary to State Legislature with the press reports, I am of the opinion that the Respondents have proposed the candidature of Sri Kasani Gyaneswar knowing full well the decision of the party.

In parliamentary democracy political parties play a crucial role. The provisions of X schedule give recognition to the role of political parties in this democratic process. As observed by Griffith and Ryle in *Parliament Functions, Practice and Procedure* (1989 edn., p. 119) "Loyalty to party is the norm, being based on shared beliefs. A divided party is looked on with suspicion by the electorate. It is natural for Members to accept the opinion of their leaders and spokesmen." Different parties may have different

ideologies or the ideology may be same for more than one party, but the means may be different. Debate, discussion and persuasion are the means and essence of the democratic process. If there is any difference of opinion in a party, it has to be sorted democratically in the party fora, but it should not be stretched to the extent of proposing a candidate contrary to the decision of the party.

The Constitution of India in Art. 105 and 194 gives the freedom of speech and expression to every Member on the floor of the House, which includes the right to vote, but this right is circumscribed by the X Schedule and every Member is bound by the whip issued by the party. In *Rajendra Singh Rana v Swami Prasad Maurya* 2007 4 SCC the Hon. Supreme Court held the act of 8 BSP Members accompanying the General Secretary of Samajwadi Party to the Governor would attract Paragraph 2(1)(a). Art. 19(1)(a) gives freedom of speech and expression not only to a Member, but also all the citizens of the country. But, exercise of this right of freedom of speech and expression publicly against the party by a Member is held to be contrary to the X Schedule by the Supreme Court. It is the constitutional and legal right of every citizen to contest in an election to the legislative bodies, but a Member of a political party contesting the election as an independent is held to be a disqualification under Paragraph 2(1)(a) of the X Schedule in the case of *Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council*. The argument of the Respondents that they are entitled to propose as many candidates as the number of seats vacant as per Art. 171(4) of the Constitution and enjoy the immunity under X Schedule does not appear to be reasonable.

The Hon. Supreme Court in *Kihoto Hollohan v Zachillhu* 1992 2 SCC 651 observed “Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People apparently have grown distrustful of the emotive political exultations that floor crossings belong to the sacred area of freedom of conscience or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct – whose awkward erosion and grotesque manifestations have been the bane of the times – above

certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation.”

The Rule 7(7) of the Members of Andhra Pradesh Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 stipulate that the Speaker while deciding a case has to give a reasonable opportunity to the Member to represent his case and to be heard in person. The Petitioner and the Respondents have been given fairly reasonable opportunity to put forth their case by giving as many as 22 hearings. They were also allowed to be represented by their advocates. The Hon. Supreme Court in *Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council* 2004 8 SCC 747 held “the nature and degree of inquiry required to be conducted for various contingencies contemplated by Paragraph 2 of X Schedule may be different. So far as clause (a) of Paragraph 2(1) is concerned, the inquiry would be a limited one, namely, as to whether a member of the House belonging to any political party has voluntarily given up his membership of such party”.

The Hon. Supreme Court also held in the same case “the role of the Speaker is in the domain of ascertaining the relevant facts and once the facts gathered or placed show that a member of the House has done any such act which comes within the purview of sub-paragraphs (1), (2) or (3) of paragraph 2 of X Schedule, the disqualification will apply and the Chairman or the Speaker of the House will have to make a decision to that effect”.

From the material placed before me, I have no hesitation to believe that the Respondents have incurred disqualification under Paragraph 2(1)(a) of X Schedule by proposing the candidature of Sri Kasani Gyaneswar in the election to the Andhra Pradesh Legislative Council from Assembly constituency. After the hearing in the cases was completed, on 21st December, 2008 the Respondents No. 1, 2, 4, 5, 7 and 8 have tendered resignation to their membership of the Legislative Assembly and the same were accepted vide Legislative Assembly Bulletin No. 63 dated 22nd December, 2008. I, therefore, decide all the points accordingly and hold that the Respondent Nos. 3, 6 and 9 who are elected Members of Andhra Pradesh Legislative Assembly from Hanamkonda, Booth and

Sangareddy constituencies respectively, have incurred disqualification under paragraph 2(1)(a) of the X Schedule by their act of proposing Sri Kasani Gyaneswar on 7th March, 2007 and in accordance with the powers vested under Paragraph 6 of the X Schedule and Rule 8 the Members of A.P. Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, I decide that these Respondents stand disqualified from continuing as Members of the 12th Andhra Pradesh Legislative Assembly and I declare that their seats have fallen vacant.

Hyderabad,
Date: 22-12-2008.

K. R. SURESH REDDY,
Speaker,
Andhra Pradesh Legislative Assembly.

K. TULJANAND SINGH,
Secretary to State Legislature.

LIST OF WITNESSES EXAMINED

For Petitioner:

PW1. Sri Mandadi Satyanarayana Reddy, M.L.A.

PW2. Sri Geetla Mukunda Reddy, M.L.A.

For Respondents:

RW1. Dr.G.Vijayarama Rao

RW2. Sri C.Chandrasekhar Reddy, the then R.D.O. &
Returning Officer for Peddapalli Constituency.

RW3. Sri K.Tuljanand Singh, Secretary Legislature.

EXHIBITS MARKED**For Petitioner:**

- Ex.P-1 Election Commission of India letter dated 21.08.2001.
- Ex.P-2 Election Commission of India letter dated 21.05.2004.
- Ex.P-3 Election Commission of India letter dated 04.02.2004.
- Ex.P-4 B-Forms issued by Sri K.Chandrasekhar Rao, President, TRS Party to Sri Geetla Mukunda Reddy
- Ex.P-5 B-Forms issued by Sri K.Chandrasekhar Rao, President, TRS Party to Sri Narayan Rao
- Ex.P-6 B-Forms issued by Sri K.Chandrasekhar Rao, President, TRS Party to Sri Mandadi Satyanarayana Reddy
- Ex.P-7 B-Forms issued by Sri K.Chandrasekhar Rao, President, TRS Party to Sri Dugyala Srinivasa Rao
- Ex.P-8 B-Forms issued by Sri K.Chandrasekhar Rao, President, TRS Party to Sri Kasipeta Lingaiah
- Ex.P-9 B-Forms issued by Sri K.Chandrasekhar Rao, President, TRS Party to Sri Soyam Bapu Rao
- Ex.P-10 B-Forms issued by Sri K.Chandrasekhar Rao, President, TRS Party to Smt.Bandari Shara Rani
- Ex.P-11 B-Forms issued by Sri K.Chandrasekhar Rao, President, TRS Party to Sri Shanigaram Santosh Reddy
- Ex.P-12 B-Forms issued by Sri K.Chandrasekhar Rao, President, TRS Party to Sri Turupu Jayaprakash Reddy
- Ex.P-13 Election Certificates of Sri Mandadi Satyanarayana Reddy
- Ex.P-14 Election Certificates of Smt.Bandari Shara Rani
- Ex.P-15 Election Certificates of Sri Dugyala Srinivasa Rao

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| Ex.P-16 | Resolution of TRS Party to propose and support Sri H.A.Rahman and Sri M.Sudershan Rao as MLC candidates. |
| Ex.P-17 | Letter issued by Election Commission of India regarding registration of Mahajan Political Party. |
| Ex.P-18 | Notification issued by the Election Commission with regard to proposal name of Sri Kasani Gyaneswar as M.L.C. by the 9 Respondents. |
| Ex.P-19 | Propaganda for the success of Sri Kasani Gyaneswar and interview in TV9 electronic media given by Sri S.Santosh Reddy. |
| Ex.P-20 | TV9 interview dated 20.03.2007 given by Sri Kasani Gyaneswar. |
| Ex.P-21 | Party-wise list maintaining by Andhra Pradesh Legislature Secretariat. |

Hyderabad,
Date: 22-12-2008.

K. R. SURESH REDDY,
Speaker,
Andhra Pradesh Legislative Assembly.

K. TULJANAND SINGH,
Secretary to State Legislature.

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